

Honorable Barbara J. Rothstein

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

TELEBUYER, LLC,

Plaintiff and
Counterdefendant,

v.

AMAZON.COM, INC., *et al.*,

Defendants and
Counterclaimants.

NO. 2:13-cv-01677-BJR

**TELEBUYER'S OBJECTION TO
AMAZON'S SECOND TECHNICAL
ADVISOR CANDIDATE**

Telebuyer objects to the appointment of Professor James Kurose, proposed by Amazon in response to the Court's November 5, 2014 Minute Entry, as a technical advisor in this matter. *See* Dkt. No. 177.

As discussed during the November 5 teleconference with the Court, it is submitted that there are three criteria that should be considered in evaluating candidates to serve as a neutral technical advisor to the Court in this case: (1) neutrality, (2) technical qualifications to understand the technology at issue (*e.g.*, a degree in electrical engineering or computer science), and (3) prior experience serving as a court-appointed neutral technical advisor.

The *Markman* briefing in this case is not limited to the typical claim construction arguments. Rather, the briefing raises a number of complex legal questions concerning

1 claim construction and invalidity, with underlying issues of fact. The third criteria—prior
2 experience as a technical advisor—is, therefore, particularly significant in this case.
3 Telebuyer submits that the Court would benefit from the advice of a technical advisor also
4 having an understanding of the legal framework in which these invalidity and claim
5 construction questions are posed.

6 Unlike Telebuyer, which has proposed two candidates (Dr. A.J. Nichols and Mr.
7 Richard Egan) that, in addition to having degrees in electrical engineering, also have
8 extensive experience serving as technical advisors in countless patent infringement cases
9 across the country, Amazon's second candidate, James Kurose, lacks any similar
10 qualifications. Dr. Kurose appears to have never served as a neutral technical advisor to
11 any court in any patent case. Accordingly, Telebuyer submits that Dr. Kurose would not be
12 well-suited to assist the Court in addressing the complex issues presented in this case. In
13 contrast, Amazon has at least twice consented to and jointly proposed Telebuyer's
14 candidate, Richard Egan, as a neutral technical advisor in prior patent litigations to which
15 Amazon was a party.¹

16 Telebuyer additionally has concerns regarding prior relationships that may exist
17 between Amazon (or its counsel) and its second candidate, Dr. Kurose. Telebuyer has
18 represented to the Court that it has no prior relationship or connection with either of its two
19 candidates. Amazon, on the other hand, has not made a similar representation as to either
20 of its candidates. Instead, Amazon represents only that it did not contact Dr. Kurose to
21 determine his availability, but has not disclosed whether it has any current or prior
22 relationship with Dr. Kurose or his research group.

25 ¹ See, e.g., *PersonalWeb Technologies, LLC et al. v. Amazon.com, Inc. et al.*, 6:11-cv-00658, Dkt. No. 121
26 (E.D. Tex. May 8, 2013); *Bedrock Computer Technologies LLC v. Softlayer Technologies, Inc., et al.*, 6:09-
cv-0269, Dkt. No. 257 (E.D. Tex. Aug. 2, 2010).

1 DATED: November 7, 2014.

2 By: /s/ Marc J. Pensabene

3 Mark A. Samuels (*pro hac vice*)
4 Brian M. Berliner (*pro hac vice*)
5 Xin-Yi Zhou (*pro hac vice*)
6 O'MELVENY & MYERS LLP
7 400 South Hope Street
8 Los Angeles, CA 90071
9 Telephone: 213.430.6000
10 Facsimile: 213.430.6407
11 Email: msamuels@omm.com;
12 bberliner@omm.com; vzhou@omm.com

13 Marc J. Pensabene (*pro hac vice*)
14 O'MELVENY & MYERS LLP
15 7 Times Square
16 New York, NY 10036
17 Telephone: 212.326.2070
18 Facsimile: 212.326.2061
19 Email: mpensabene@omm.com

20 Jonathan Crawford (*pro hac vice*)
21 O'MELVENY & MYERS LLP
22 2765 Sand Hill Road
23 Menlo Park, CA 94025
24 Telephone: 650.473.2615
25 Facsimile: 650.473.2601
26 Email: jcrawford@omm.com

Jeremy E. Roller, WSBA No. 32021
Diana S. Breaux, WSBA No. 46112
YARMUTH WILSDON PLLC
818 Stewart Street, Suite 1400
Seattle, WA 98101
Telephone: 206.516.3800
Facsimile: 206.516.3888
Email: jroller@yarmuth.com;
dbreaux@yarmuth.com

*Attorneys for Plaintiff and
Counterdefendant Telebuyer, LLC*

CERTIFICATE OF SERVICE

I hereby certify that on this date, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

Brian D. Buckley
Ewa M. Davison
Fenwick & West LLP
bbuckley@fenwick.com
edavison@fenwick.com

Matthew J. Moore
Michael J. Gerardi
Latham & Watkins LLP
matthew.moore@lw.com
michael.gerardi@lw.com

Douglas E. Lumish
Richard G. Frenkel
Gabriel S. Gross
Patricia Young
Eugene Chiu
Latham & Watkins LLP
doug.lumish@lw.com
rick.frenkel@lw.com
gabe.gross@lw.com
patricia.young@lw.com
eugene.chiu@lw.com

Cassius K. Sims
Latham & Watkins LLP
cassius.sims@lw.com

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated: November 7, 2014 at Seattle, Washington.

s/Kelly M. Kennedy
Kelly M. Kennedy, Legal Assistant